

LABOUR DEPARTMENT

The 9th September, 1994

No. 14 13/87-61 ab. 43.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad respect of the dispute between the workman and the management of M/s Kamla Syntex, Pvt. Ltd., Ballabgarh *versus* Shri Lalan Rawat:—

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 29/38

between

THE MANAGEMENT OF M/S KAMLA SYNTEX PVT. LTD., PLOT NO. 10-11, SECTOR-4,
BALLABGARH (FARIDABAD)

versus

THE WORKMAN NAMELY SHRI LALAN RAWAT, C/O OFFICE TEXTILE AND SYNTEX EMPLOYEES VIDE 9, INDRA NAGAR, SECTOR-7, FARIDABAD.

Present :

Shri Jawahar Lal, for the workman.

Miss Alka Bhatia, for the Management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication.— *vide* Haryana Government Endst. No. 58588-93, dated the 28th December, 1988 :-

Whether the termination of services of Shri Lalan Rawat is legal and justified? If not, to what relief is he entitled to ?

2. The case of the workman is that he had been working with the management as Jigger operator since 1st May, 1984 and his last drawn wages were Rs. 510 p.m. He was an active member of the union. He had asked for minimum wages and the grade of operator. The management felt annoyed and terminated his services on 3rd May, 1988 on account of his trade union activities and making of demand. No notice was given to him prior to the termination of his services. He made complaint to the Labour department on 4th May, 1988 but the management did not take back him on duty. He is thus, entitled to be reinstated into service with continuity in service and full back wages.

3. The management submitted written statement dated 5th April, 1991 stating therein that there was no relationship of employer and employee between the parties. The workman has thus, no cause of action. The workman has also no *locus standi* to raise the dispute. The claim is also bad for mis-joinder of parties and non-rejoinder of necessary parties. The workman has not come to the court with clean hands. He has raised the dispute to harass and blackmail the management and to extract money. He is also gainfully employed elsewhere. Consequently, he is not entitled to any relief.

4. The workman submitted rejoinder dated 16th December, 1991 re-asserting the previous averment and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :—

1. Whether there is no relationship of master and servant between the parties ? OPR
2. Whether the termination of services of Shri Lalan Rawat is legal and justified? If not, to what relief is he entitled to ? (As per reference),
6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are under :—

Issue No. 1:

8. Two witnesses have been examined by the management. MW-1 K.A. Kuttapan, personnel officer of the management deposed that Lalan Rawat was not the workman of their company. He had brought the attendance register and the name of the workman was not mentioned in it. He had not brought the wages register. The workman was not employed with them. It may be possible that the workman may have been employed by one of their contractors but he did not know. In the end, he stated that their company was registered under the contract Labour (Regulation and Abolition) Act but it was not now registered. MW-2 J.K. Sharma, time officer, deposed that he had been employed in the factory of the management since July, 1989. The present workman had never been their employee. The management had employed contractor during the period from 1982 to 1989 and they had no connection with the employees of the contractor during that period. He also produced registration certificates Ex. MW-2/1 to Ex. MW-2/3 granted under sub-section 2 of section 7 of the contract labour (Regulation and Abolition) Act, 1970. He also produced the attendance register of the management pertaining to the year 1985 to 1987. In the end he stated that the name of the present workman was not indicated in these registers.

9. On the other hand, the workman examined himself on oath and confirmed his version given in the claim petition on oath. He also produced photo copies of application Ex. W-1 and postal receipt Ex. W-2 through which he had sent complaint to the management with a copy to the Deputy Commissioner and other officers.

10. On the basis of aforesaid evidence, it has been contended on behalf of the management that it stands established that the name of the workman did not exist in the attendance register of the company for the relevant period. It is thus, clear that the workman had never been employee of the management. It also stands established from the certificate Ex. MW-2/1 to MW-2/3 that the company was granted permission to get the work done through contractor during the period from 21st November, 1985 to 17th June, 1988. There was thus, no occasion for the management to employ workers. The present workman might have been employed by one of contractor who was assigned the job on contract basis. Thus, there was no relationship employer and employee between the parties.

11. In reply, it has been contended on behalf of the workman that MW-1 K.A. Kuttapan admitted in his cross examination that the company had started in the year 1983. He also admitted that there was permanent staff in the year 1984. He further, stated that no register of casual workers was maintained. He admitted in his cross examination that the name of any workman was not indicated in the attendance register who was employed with the company in September 1984. He also admitted that the words 'temporary workers' were written in the attendance register pertaining to January 1984. Thus, no reliance can be placed on the register produced by the management through this witness. With regard to the statement of MW-2 J.K. Sharma, it was pointed out that this witness failed to indicate the reason as to why the name of any workman was not entered in the attendance register for the months of November 1987 and December 1987. Thus, it can be concluded that the register produced by this witness J.K. Sharma were also not properly maintained and no reliance can be placed on these registers.

12. It has next been urged on behalf of the workman that the management did not plead in the written statement that the workman was employed by any contractor. The management has also not given the name of the contractor with whom the workman might have been working. Thus, the mere fact that the management had got permission to have the work done from the contractors does not prove that the workman was never employed by the management.

13. Lastly it has been urged on behalf of the workman that the workman was issued ESI card to get treatment but had lost the same. In that situation he had submitted an application a copy of which is Ex. W-1/1 to get duplicate copy. It was duly attested by the management giving the Insurance No. 6032789. MW-1 K.A. Kuttapan admitted that this form bore the signatures of an officer of the management. He also confirmed the Insurance No. given on this form. No date is available under the signatures of the attesting authority on this form. However, the perusal of this form shows that it was printed on 12th February, 1987. Obviously this form could be utilised by the present workman after 12th February, 1987. This fact clearly shows that the workman was employed by the management as stated by him on oath. There was thus relationship of employer and employee between the parties.

14. MW-1 K. A. Kuttapan stated in his cross-examination that the company was having less than 50 workmen on its rolls till 1983 and less than 100 workmen during the period from 85 to 87. He also admitted that no employee was working on permanent basis in the year 1984. This position shows that at least more than 50 workmen were working in the factory during the year 1987. The attendance register produced by MW-2 J.K. Sharma however, did not indicate the name of any workman during the months November and December 1987. Similarly there was no entry with regard to the name of any of the workman for the months of September 1984 and November 1984 as admitted by MW-1 K. A. Kuttapan. This position clearly shows that the attendance registers were not properly maintained in the regular business of the company and no reliance can be placed on the record.

15. There is merit in the submission made on behalf of the workman that application form Ex. W-1/1 submitted by the workman for getting the duplicate SSI card clearly proves that the workman was on the roll of the company ever after 12th February, 1987. This observation is based on the ground that MW-1 K.A. Kuttapan admitted that this form was attested by an officer of the company. He also admitted that the Insurance No. given on this form was of the company. It has been pleaded by the management that this form could be attested by the present employer or last employer or president or secretary of the trade union or the person known to the local office. The officer of the management might have attested this form just as a person known to the office as the workman might have been the employee of a contractor engaged by the company. This plea can not be accepted because a workman employed by a contractor was also entitled for SSI card. This plea can not be accepted as the management has not divulged the name of the contractor under whom the workman might have worked. The management did not summon the record from ESI to show that the workman was issued ESI card being a workman employed by the contractor. The management was supposed to have the record relating to the payment of wages made by the contractor to the workman employed by them. The management did not produce such record to prove that the workman was employed by a contractor. The management did not take a plea in the written statement that the workman was employed by a contractor. In this situation the evidence led by the management to indicate that the workman might have been employed by the contractor is beyond pleadings. Keeping in view all the facts and circumstances of the case, it is clear that form Ex. W-1/1 was attested by a officer of the management in the capacity of employer.

16. For the reasons recorded above, it is held that the management has failed to prove that there was no relationship of employer and employee between the parties. Issue No. 1 is decided against the management and in favour of the workman.

Issue No. 2.

17. The workman has stated on oath that he was employed by the management on 1st May, 1984 and his services were terminated on 3rd May, 1988, obviously the workman had rendered more than 240 days continuous service with the management. The workman has also stated on oath that the management had not paid him any retrenchment compensation. The impugned action of the management is thus illegal being violative of the provision of Section 25-F of the Act. Consequently it is held that the termination of services of the workman is illegal and unjustified. The workman is entitled to be reinstated into service with full back wages. Issue No. 2 is decided in favour of the workman and against the management.

18. In view of the findings on the aforesaid issues it is held that the termination of services of the workman is illegal and unjustified. The workman is entitled to be reinstated into service with full back wages and continuity in service. The award is passed accordingly.

Dated : The 29th July, 1994.

U.B. KHANDUJA,
Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2551, dated the 29th July, 1994.

A copy with three spare copies is forwarded, to the Financial Commissioner, and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,
Presiding Officer,
Labour Court-II,
Faridabad.

The 19th September, 1994

No. 14/13/87-6Lab./95.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Government of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Ambala in respect of the dispute between the workman and the management of Divisional Forests, Officer, Ambala *versus* Shri Jai Bhagwan.

IN THE COURT OF SHRI S. R. BANSAL, (ADDL. DISTT. & SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 55 of 1992

WORKMAN SHRI JAI BHAGWAN, THROUGH SHRI JANAK RAJ SHARMA, ADVOCATE,
BEHIND BANK OF BARODA, AMBALA CITY AND THE MANAGEMENT
DIVISIONAL FOREST OFFICER, PINJORE, DISTRICT AMBALA.

Present :

W.R. Shri Bichattar Singh, Clerk.
MR. Shri Balbir Singh, ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between Shri Jai Bhagwan workman and the management Divisional Forest Officer, Pinjore, District Ambala to this court for adjudication, *vide* Haryana Government Notification bearing No. 12582--86, dated 6th March, 1992 :—

“Whether the termination of the services of Shri Jai Bhagwan, workman, is valid and justified ?
If not so, to what relief is he entitled ?”

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as his claim statement. The management was called upon to file written statement. It however failed to do so. Eventually *ex parte* proceedings were taken against the management and the workman was called upon to lead *ex parte* evidence.

The stand of the workman in the demand notice is that he joined the management as mali on 1st October, 1982 and his services were abruptly terminated on 19th April, 1991 although he has rendered more than 240 days of service in a calendar year. It is alleged that no prior notice was given nor any retrenchment was paid and the termination of the services is on account of unfair labour practice. He therefore demanded his reinstatement with continuity of service and back period wages.

The workman was called upon to lead *ex parte* evidence. Several opportunities were granted for the purpose but he failed to lead evidence on the file and his evidence had to be shut by the order of the court.

Since the allegations of the workman as contained has remained unsubstantiated on the record, the reference is bound to be answered against the workman. We have to see who will fail if no evidence is led on either side. It is the workman who is to be bound to be non-suited as his mere allegations contained in the demand notice can not be taken as proof. In view of the matter I hold that workman is not entitled to reinstatement with continuity of service and back wages.

The reference stands answered accordingly.

An intimation be sent to all the quarters concerned.

The 9th June, 1994.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer,
Labour Court, Ambala.

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Endst. No. 1072, dated 14th June, 1994.

A copy is forwarded, to the following in compliance with letter No. 14/13/87-6Lab, dated 10th December, 1987 of the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh :—

- (1) The Labour Commissioner, Haryana, Chandigarh.
- (2) Labour Officer-cum-Conciliation Officer, Ambala.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer,
Labour Court, Ambala.